



Original: **French**

No.: ICC-01/04-01/06

Date: 25 April 2017

TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Péter Kovács

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. THOMAS LUBANGA DYILO***

**Public Redacted Version of
ICC-01/04-01/06-3293-Conf**

**Information regarding the Issues as well as the Concerns and Wishes of the
Potentially Eligible Victims in the Reparations Proceedings**

Source: Office of Public Counsel for Victims

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

Office of the Prosecutor

Ms Fatou Bensouda

Counsel for the Defence

Ms Catherine Mabilie

Mr Jean-Marie Biju-Duval

Legal Representatives of V01 Victims

Mr Luc Walley

Mr Franck Mulenda

Legal Representatives of Applicants

Legal Representatives of V02 Victims

Ms Carine Bapita Buyangandu

Mr Paul Kabongo Tshibangu

Mr Joseph Keta Orwinyo

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

Ms Paolina Massidda

Ms Sarah Pellet

Ms Caroline Walter

Ms Bibiane Bakento

**Office of Public Counsel for the
Defence**

States' Representatives

Trust Fund for Victims

Mr Pieter de Baan

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

I. PROCEDURAL HISTORY

1. On 21 October 2016, Trial Chamber II (“Chamber”) issued an order relating to the request of the Office of Public Counsel for Victims (“OPCV”) for guidance on its mandate with respect to the victims potentially eligible for reparations (“Order”). In the Order, Chamber ruled “that it is for the OPCV to decide, on the basis of its own expertise, what approach it deems suitable for the conduct of interviews with Potentially Eligible Victims”.¹ The Chamber also indicated that the files of the potentially eligible victims should be transmitted to the Registry by 31 December 2016.²
2. On 20 December 2016, the Lead Counsel of the OPCV, acting as the legal representative of the potentially eligible victims (“Legal Representative”), filed a request for an extension of time until 30 June 2017 in order to complete some files of victims already interviewed and to finish collecting applications for reparations from potentially eligible victims.³
3. On 22 December 2016, the Chamber issued the “Order to complete the process of identifying victims potentially eligible to benefit from reparations”⁴ granting an extension of time until 30 March 2017.
4. On 20 March 2017,⁵ the Legal Representative filed a second request for an extension of time, which was denied by the Chamber on 6 April 2017.⁶

¹ “Order relating to the request of the Office of Public Counsel for Victims of 16 September 2016” (Trial Chamber II), ICC-01/04-01/06-3252, 21 October 2016, para. 19.

² *Ibid.*, p. 10.

³ “Demande de prorogation du délai aux fins de dépôt des demandes en réparation supplémentaires de bénéficiaires potentiels”, ICC-01/04-01/06-3266-Red, 20 December 2016; and “Deuxième demande de prorogation du délai aux fins de dépôt des demandes en réparation supplémentaires de bénéficiaires potentiels”, ICC-01/04-01/06-3279-Red, 20 March 2017.

⁴ “Order to complete the process of identifying victims potentially eligible to benefit from reparations” (Trial Chamber II), ICC-01/04-01/06-3267-tENG, 22 December 2016.

⁵ “Deuxième demande de prorogation du délai aux fins de dépôt des demandes en réparation supplémentaires de bénéficiaires potentiels”, ICC-01/04-01/06-3279-Conf, 20 March 2017.

On 12 April 2017, the Legal Representative filed a request for a review of that decision.⁷

5. After the field missions, during which the Legal Representative's team was able to interview more than 350 potentially eligible victims between November 2016 and March 2017, the Legal Representative considers this to be a useful time to apprise the Chamber of certain issues that came to the fore during the fieldwork, and to convey the concerns and wishes expressed by the victims in the interviews. The Legal Representative is of the view that this step will enable the Chamber to deliver a decision on the victims' files with a better understanding of the issues they face.

6. This submission is filed confidentially because it contains information about the Legal Representative's fieldwork which could be used to identify certain persons. A public redacted version will be filed in due course.

II. INFORMATION ON THE FIELD MISSIONS

7. Pursuant to the Order, the Legal Representative's team conducted four field missions, from 15 to 22 November 2016, from 29 November to 15 December 2016, from 2 to 17 February 2017, and from 28 February to 17 March 2017.

8. In the course of those four missions, the Legal Representative's team was able to meet potentially eligible victims residing in the following 73 *localités* and surrounding areas: [REDACTED].

⁶ "Decision on Requests for the Extension of Time submitted by the Office of Public Counsel for Victims, the Registry and the Legal Representatives of V02 Victims", ICC-01/04-01/06-3290-tENG, 6 April 2017.

⁷ "*Demande de réexamen de la 'Décision portant sur les demandes de prorogation de délai présentées par le Bureau du conseil public pour les victimes, le Greffe et les Représentants légaux du groupe de victimes V02'* (ICC-01/04-01/06-3290)", ICC-01/04-01/06-3292, 12 April 2017.

9. The Legal Representative's team has interviewed more than 350 potentially eligible victims to date. Approximately 30 of them fall outside the scope of the charges (so no file was prepared for them), whereas all the others were able to fill out an application for reparations. Some of those files are still incomplete because they are missing requisite documents. The Legal Representative's team is waiting to receive the necessary documents to complete these applications. Moreover, as indicated in her Request of 20 March 2017, another approximately 300 potentially eligible victims have been identified, some of whom have already contacted the Legal Representative's team.⁸ Many of those 300 individuals are potentially eligible victims identified recently by the Registry during its last outreach mission in relation to the instant case, conducted in "pro-Lubanga" *localités* in late January 2017.⁹

10. The Legal Representative notes that the majority of the potentially eligible victims interviewed are former child soldiers – i.e. direct victims – a majority of them boys, most of whom were enlisted between the ages of 9 and 14. Some of the potentially eligible victims interviewed are girls, who were enlisted in the UPC/FPLC at the same ages. In addition, a minority of the potentially eligible victims interviewed are relatives (father, mother, uncle, aunt, brother or sister) of direct victims, designated by the family to represent its interests or who are, de facto, the person responsible for the direct victim and his/her family.

11. Whether they were forcibly enlisted or joined the UPC/FPLC to defend their families and communities, all of them regret to this day the difficult time they spent in the ranks of the militia and the impact it has had on their lives – the physical and emotional/psychological impact, and the impact on their education,

⁸ "Deuxième demande de prorogation du délai aux fins de dépôt des demandes en réparation supplémentaires de bénéficiaires potentiels", footnote 5, above. Also "Demande de réexamen de la 'Décision portant sur les demandes de prorogation de délai présentées par le Bureau du conseil public pour les victimes, le Greffe et les Représentants légaux du groupe de victimes V02' (ICC-01/04-01/06-3290)", ICC-01/04-01/06-3292, 12 April 2017 ("Request for Review").

⁹ Request for Review, para. 17.

employment and family life. Some of the potentially eligible victims managed to escape from the UPC/FPLC after a few weeks, whereas others spent several months or several years in the militia. Some never returned. However, owing to the extremely harsh living conditions and the reality of a child soldier's life in a militia more broadly, the Legal Representative has observed a similar impact on their lives and on their families' lives, regardless of the amount of time they spent in the UPC/FPLC. The Legal Representative also notes that, once the life of a child and a family has been so abruptly disrupted, the disruption to the child's education, family life and civilian life persists for several years, regardless of the amount of time spent in the militia. In extremely rare cases, the disruption is shorter, when a family is fortunate enough to have been less affected by the conflict and to have more resources.

12. On 1 February and 20 March 2017, the Legal Representative sent the Trust Fund for Victims ("Trust Fund"), confidentially, certain information, relevant to the collective reparations programmes being developed, about the situation and needs of the potentially eligible victims as observed in the field, with a view to enabling the Trust Fund to anticipate and take into account the number of people interviewed and the *localités* where they are currently residing.¹⁰

III. OBSERVATIONS ON PRACTICAL ISSUES

A. Observations on the availability of identity documents and demobilization papers

13. Since the beginning of 2017, it has become easier for victims to produce an official identity document thanks to the voter registration campaigns taking place around the country. However, the Legal Representative observes that errors continue to be entered on the voter cards by representatives of the relevant authorities, who are poorly trained, badly informed or simply careless. Most of

¹⁰ [REDACTED].

the potentially eligible victims did not notice the errors until the Legal Representative's team checked the information on their cards with them;¹¹ others have encountered difficulties prevailing upon the authorities to correct errors. In any case, and notwithstanding these errors, the Legal Representative finds that it is now easier to establish the identities of the individuals interviewed.

14. Most of the potentially eligible victims who were interviewed before the above-mentioned registration campaigns produced "IPM" cards ("*impôt minimum personnel*" [minimum personal tax]). This is an identity document that began to be issued in 2016.¹² This tax is one of the provincial taxes levied for the decentralized administrative units, in particular the *communes*, the *secteurs* and the *chefferies*. The card is therefore issued by the local administration and now seems to be as widely used as the voter card to establish and prove identity in the Democratic Republic of the Congo (DRC).¹³

15. Since most of the victims potentially eligible for reparations in the instant case do not have a valid identity document or have lost the documents enabling them to prove their identity, they are going to the local authorities now – a process that entails considerable effort – so as to be able to demonstrate their identity and date

¹¹ Note that the overwhelming majority of former child soldiers did not finish school. Some of them cannot read. They are therefore unable to check whether the information entered on their identity documents is correct when those documents are issued by the authorities.

¹² Official legislation: <http://www.leganet.cd/Legislation/Dfiscal/Impot/OL.13.001.23.02.2013.A.pdf>, p. 18. Also Radio Okapi article, September 2015: <http://www.radiookapi.net/2015/09/14/actualite/economie/kisangani-ultimatum-pour-le-paiement-de-limpot-personnel-minimum>

¹³ The devolved administration often distributes blank IPM cards – sometimes already stamped – to the chiefs and authorities in the *localités*. The holder's photo and personal information are therefore added locally and checked by the chief of the *localité* where the holder resides. The photo and personal information are therefore not stamped, either because there is no stamp on the card or because the card was stamped before the personal information was added. In principle, the holders of these cards should go to the local administration afterwards to have them stamped or re-stamped. However, through its meetings with the victims and the chiefs of *localités*, the Legal Representative's team observed that once people have their IPM cards, since they have already paid for them, few return to have them stamped or re-stamped, and the cards are therefore used as is and are considered valid locally.

of birth in order to participate in the proceedings pending before the Court.¹⁴ Consequently, many of the potentially eligible victims are producing recently issued IPM or voter cards.

16. Regarding demobilization papers, the vast majority of the former child soldiers interviewed said that, when they reported to the National Commission on Disarmament, Demobilization and Reintegration (NCDDR) or the United Nations Mission in the Democratic Republic of the Congo (MONUC) during the demobilization process, those who were still minors were referred to interim care centres for child soldiers (run by Caritas, Save the Children, UNICEF, COOPI, IRC, etc.). Few of the individuals concerned have kept any documents they might have received at the time from the interim care centres. Since they were still minors and were often living in difficult circumstances, most of the potentially eligible victims did not realize the importance of keeping these documents which may have contained information about their demobilization. Consequently, many of them now have no documentation. In addition, those who reported to the NCDDR without uniforms or weapons were turned away and were not issued with any documents attesting to their demobilized status – and therefore to their enlistment. This is all the more important because the interim care centres and the NCDDR did not begin demobilizing child soldiers until 2004, so no official demobilization papers could have been issued before that date. The vast majority of child soldiers who left the UPC/FPLC before 2004 therefore did not have an opportunity to go through a formal demobilization process, and they did not keep their military equipment between the time of their escape from the militia and the implementation of the demobilization process via interim care centres

¹⁴ An IPM card costs roughly \$2 (2,000 Congolese francs or 6,000 shillings), which is a considerable sum for each applicant concerned since the average income per person per day is less than \$2, according to the most recent data released by the United Nations Development Programme. See the *Human Development Report 2016*, at http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf (accessed on 3 April 2017). Voter cards are free of charge, but victims have to travel to the authorities to register, which often involves transport costs that few can easily afford.

and the NCDDR.¹⁵ It is also evident from the interviews with the potentially eligible victims that many of them did not come forward during the demobilization campaigns for fear they would be re-enlisted by an armed group, and preferred to remain in hiding. As a result, very few potentially eligible victims have been able to produce a document certifying their release from an armed group, for the purposes of preparing an application file for reparations.

17. Regarding the certificates issued by local authorities, when the members of the Legal Representative's team interviewed potentially eligible victims in *localités* far from their own villages accompanied by the chief of their *localité*, avenue or village (depending on the case and the organization in the *localité* in question), in most cases the chief did not bring the stamp for stamping the certificate made out for the purposes of the application for reparations. The chief nevertheless always signed the declarations and the Legal Representative's team always checked his identity document and made a copy of it to add to the file of the potentially eligible victim concerned. The Legal Representative's team also made every effort to ensure that most of those certificates do bear the stamp of the issuing authority or are accompanied by documentation establishing the status of the authority concerned.

B. Observations on former child soldiers' education

18. In theory, progression through the school system in the DRC is as follows: children enter the first year of primary school at age 6; the second year of primary school at age 7; the third year of primary school at age 8; the fourth year of primary school at age 9; the fifth year of primary school at age 10; the sixth year of primary school (the primary school certificate) at age 11; then the first year of secondary school (*cycle d'orientation* [lower secondary]) at age 12; the second year of secondary school (*cycle d'orientation* [lower secondary]) at age 13; the third year

¹⁵ In that regard, see the transcript of the hearing (open session) of 14 June 2016, ICC-01/04-02/06-T-101-Red-ENG (WT), p. 86, lines 6-18.

of secondary school (*humanités* [upper secondary]) at age 14; the fourth year of secondary school (*humanités* [upper secondary]) at age 15; the fifth year of secondary school (*humanités* [upper secondary]) at age 16; the sixth year of secondary school (*humanités* [upper secondary]) at age 17 (upon successful completion, they matriculate with the *Diplôme d'État* ("DE") [state diploma] at age 18).

19. It should be stressed, however, that, owing to the conflicts and low incomes in Ituri, many children started school late or very late (by a year, but sometimes by two, three or four years); some children repeated one or more years; while others dropped out of school during the conflict years. Consequently, the majority of the potentially eligible victims concerned do not have a linear educational history. Moreover, some are too embarrassed to admit to a delayed start to school, while others, owing to gaps in their education and to their low level of attainment, have great difficulty saying what level they reached before their enlistment.

20. In the light of these observations, the Legal Representative underscores the importance of implementing collective reparations programmes of remedial education for adults (literacy or basic skills upgrading depending on the case; resumption of education in other cases), to enable these young adults to access job training programmes and benefit fully from them.

C. Observations on the lack of precision with regard to dates and other information

21. As discussed above, the Legal Representative notes that some potentially eligible victims do not know their date of birth or their age, or only approximately, and nor do their parents (indirect victims), who are now older. This can be attributed to several factors, including the following: some victims are illiterate or have attained only a low level of education; some victims lost their parents at a very young age (and no longer have anyone who can attest to their

exact date of birth, since often the only family members who remain alive after conflicts are grandparents or siblings who were similarly enlisted); and some victims were enlisted at a very young age (which magnifies the impact on their memory and the trauma suffered).

22. Enlistment at a very young age – which is common – combined with the hardship experienced in the militia, certainly seems to have directly affected the potentially eligible victims’ ability to remember events clearly, in particular the dates of those events. This can be attributed to memory problems but also to trauma associated with the life of a child soldier (forced use of alcohol and cannabis – which in some cases continues today – exposure to extreme violence, to torture, etc.). A similar phenomenon has been observed among the potentially eligible indirect victims, who often have very few details about the former child soldier’s history in the UPC/FPLC.

23. In order to make up for those memory problems, the Legal Representative’s team strove, wherever possible, to have witnesses, when they were present or reachable, confirm the veracity of the information contained in the applications. In particular, the team endeavoured to have the chief of the *localité* concerned write an additional declaration when he had knowledge of the facts reported by the potentially eligible victim interviewed and more broadly of the events that had taken place in the region during the period in question. Furthermore, in the interviews, the Legal Representative’s team used best practices and methodologies to aid recall with the individuals concerned, and endeavoured to refer to known time markers to check the facts reported by its clients. In that respect, the Legal Representative refers to the “Judgment pursuant to Article 74 of the Statute” and to the facts established therein, which her team used as the main

frame of reference to assess whether the individuals interviewed could qualify *prima facie* as victims for the purposes of the instant reparations proceedings.¹⁶

24. During the interviews with some of the potentially eligible victims, the Legal Representative's team nevertheless found that some of the facts reported, although appearing *prima facie* to fall within the scope of the instant case, were not corroborated by the names of the better known battles or the names of the commanders cited in the trial and mentioned in the Judgment. After her team interviewed more than 350 potentially eligible victims, it was possible to identify at least two types of situation in which the information provided, although initially appearing to fall within the scope of the charges, did not match the precise information cited in the Judgment or during the trial.

25. Firstly, the Legal Representative notes that several potentially eligible victims were enlisted in the UPC/FPLC or taken to areas outside their family's *localité* of origin. Consequently, the individuals concerned did not know the (geographical) environment in which they grew up with the UPC/FPLC and were even less familiar with the names of the villages they passed through with the militia. These individuals usually returned to live in their region of origin after the end of the conflict or after their demobilization, making it even harder for them to recall – 15 years after the events – the exact names of the *localités* they passed through during their time with the UPC/FPLC.

26. Secondly, the Legal Representative has also found that some potentially eligible victims refer to names of “commanders” that were not cited in the trial. Indeed, owing to their very young age, sometimes combined with little formal schooling and varying levels of educational attainment at the time of their enlistment in the UPC/FPLC, the individuals in the militia whom the former child

¹⁶ “Judgment pursuant to Article 74 of the Statute” (Trial Chamber I), ICC-01/04-01/06-2842, 14 March 2012. “Order for Reparations pursuant to Article 75 of the Statute” (Trial Chamber II), ICC-01/04-01/07-3728-tENG, 24 March 2017, paras. 45-139.

soldiers considered “important” or hierarchical “superiors” were not necessarily the known highest-ranked commanders in the structure of the UPC/FPLC, but were rather the names of persons of higher rank than themselves who had authority over them for the performance of their daily tasks.

27. As a consequence, the Legal Representative’s team exercised the greatest caution when preparing the files with the potentially eligible victims, endeavouring to verify and corroborate as far as possible the pathways of these former child soldiers in the UPC/FPLC, when tangible “evidence” was lacking. In reference to the suggestions made by some of the experts who testified during the proceedings, the Legal Representative is in favour, in this regard, of using a set of positive presumptions (based on the facts established in the Judgment and related during the trial, in particular in certain reports admitted as evidence in the instant case) as the standard of proof required for the purposes of determining the admissibility of the files of the applicants for reparations.¹⁷ Consequently, when it transpired from a potentially eligible victim’s account that he/she had belonged to another militia or had been enlisted in the UPC/FPLC outside the temporal scope of the charges, the Legal Representative explained the situation to that person and, by mutual agreement, did not prepare a file for that person.

¹⁷ “Observations of Dr. Golden, Mr. Higson-Smith, Professor Ní Aoláin and Dr. Wühler pursuant to Rule 103 of the Rules of Procedure and Evidence”, ICC-01/04-01/06-3240-Anx9, 30 September 2016 (reclassified as public on 6 October 2016 on Trial Chamber II’s instructions), paras. 13-22: “Previous reparation programs have been sensitive to such evidentiary difficulties and have relaxed the evidentiary requirements in favour of the beneficiaries. Sufficient proof in comparable reparations programming has included the use of positive presumptions based on a matrix of time and place where victims of conflicts suffered loss, injury and violations of their rights, triangulated evidence from multiple sources to place a child and/or her parents in locales that were subject to persistent conscription (to avoid painful and repetitive re-interviewing of victims), and corroboration by available reporting, which can lessen the burdens on individual victims to satisfy a burden of proof in a collective reparation scheme that is more akin to the kind of rigor that might be found in civil proceedings. The burdens of verification for victims must be consistently guarded against, and slippage from manageable and well-intentioned procedure to highly invasive, destabilizing and stigmatizing procedure avoided at all costs, as such slippage will affect the quality of participation in and experience of the reparations process as a whole” [Emphasis added]. See also the approach adopted in the reparations proceedings in *Katanga*: “Order for Reparations pursuant to Article 75 of the Statute” (Trial Chamber II), ICC-01/04-01/07-3728-tENG, 24 March 2017, paras. 57-63. In particular, para. 61: “the Chamber sees fit to proceed on presumptions and to act on circumstantial evidence to satisfy itself of certain facts in the case.”

IV. INFORMATION ON THE CONCERNS AND NEEDS EXPRESSED BY THE POTENTIALLY ELIGIBLE VICTIMS IN THE INTERVIEWS

A. Types of harm suffered by the victims interviewed

28. The potentially eligible victims interviewed all reported the following harm, typically recognized as suffered by persons who have been child soldiers: *physical injuries and/or diseases contracted and developed* as a result of the extremely harsh living conditions in the militia (little food, very poor sleep conditions, extremely poor sanitary conditions – lice, dirty clothes, uncooked food, drugs, alcohol, etc.), weapons and very heavy equipment to carry, ill treatment by older soldiers, injuries sustained in training or combat); *psychological trauma* associated with things they experienced or witnessed; *challenges of the transition* from life in the armed group and the behaviours learned there to civilian and family life; *loss* of crucial *years* of education and development, and loss of educational and occupational opportunities; low *morale* about their current situation and the challenges of surviving and providing for their families. These are the same types of harm as those established by the experts during the trial.¹⁸

B. Need for psychological and medical care

29. The meetings with the potentially eligible victims highlighted a real need for psychological care. Some of them appear to suffer from psychological disorders of varying types and gravity, and most are still traumatized by the events experienced and harbour feelings of frustration and latent anger that, according to some of them, can still lead them to violence. Many are still disturbed by the sight of blood or loud noises or when someone raises their voice or speaks to them in a harsh or threatening tone. Most are still deeply sad at having lost loved

¹⁸ See, *inter alia*, “Report of Ms. Elisabeth Schauer following the 6 February 2009 ‘Instructions to the Court’s expert on child soldiers and trauma’”, ICC-01/04-01/06-1729, 25 February 2006. Also “Judgment pursuant to Article 74 of the Statute”, footnote 16, above, paras. 478-479.

ones while they were in the militia – friends or family members who were enlisted and killed, often in front of them; or parents who were killed or who died during their absence from disease or because they attempted to secure their release from the militia. The Legal Representative notes that some seem to be unaware they are traumatized, but recommends that they nevertheless have access to psychological care.

30. Many potentially eligible direct and indirect victims continue to suffer from physical conditions developed as a result of what happened after their enlistment in the UPC/FPLC. The potentially eligible direct victims report untreated or badly treated injuries, as well as neglected chronic diseases or related complications that have developed since the events. Some need specialist care, surgery and urgent medical attention. With regard to the potentially eligible indirect victims, apart from those who sustained physical injuries during their attempts to retrieve their child(ren) from the UPC/FPLC, most of the physical ailments they continue to suffer from today are linked to poor, diminished health owing to anxiety that developed after the enlistment of their children in the UPC/FPLC, in particular blood-pressure problems and other diseases stemming directly from those conditions.

31. Some potentially eligible victims have not managed to overcome their addictions to cannabis and/or alcohol that began with forced use in the UPC/FPLC, and need medical/psychological support in that regard. The same applies to those who came back changed, and according to their close relatives (indirect victims), now suffer from permanent madness/psychiatric disorders. In that specific case, the Legal Representative notes that the potentially eligible victims are indirect victims and that the type of assistance they could benefit from through the Court's reparation programmes should include necessary care for the former child soldiers concerned.

C. Need for and concerns about access to education and job training

32. Many of the potentially eligible victims interviewed are extremely enthusiastic and grateful at the idea of having an opportunity to receive job training, but all of them worry that, in order to undertake such training, they would have to discontinue the occupations that currently enable them to provide for themselves and their families. It is important to design these programmes, which appear both necessary and in demand, in a way that enables these individuals to benefit from them without depriving them of their occupations and livelihoods. The Legal Representative notes in that respect that part-time programmes located near where the potentially eligible victims concerned live could offer appropriate, accessible – and therefore effective – support.

33. The Legal Representative has also observed that many former child soldiers find work as motorcycle taxi drivers. For want of other opportunities, this occupation offers them a slightly easier way to earn enough to provide for themselves. Most rent or borrow the motorcycle and must therefore share their earnings with and answer to someone else. Used to that life, many fear they are unable to learn anything else or to be successful in any other occupation, and would therefore prefer to receive related training in mechanics or in driving a car, so they could transport goods, for example. In this light, it appears all the more important to offer these people access to a programme of remedial education for adults as a preliminary to job training. In that respect, the Legal Representative notes that many potentially eligible victims expressed worry at the idea of having to return to a school classroom and seemed relieved that this type of remedial education would be adapted to adults in their situation. Moreover, it has been found that some need to be taught to read and write, which supports the idea that the proposed programmes will need to cover different levels in order to be adapted to the individual situations of the victims if they are to benefit fully from them.

34. Many potentially eligible victims expressed reservations about indicating their preferences for job training when they fill out the forms and then not being able to change their choices later when the programmes are implemented. It is important to note that, when they fill out the forms, the potentially eligible victims do not have much time to think. Moreover, they are asked only for an estimate of their needs, which they make at that point in time and are not in a position to anticipate for the medium or long term, which could have a major impact on the actual and effective benefits of the reparations when the programmes are implemented.

35. In addition, many potentially eligible victims have also expressed a wish for language classes (French or English), in addition to job training and remedial education for adults, so can they can move ahead in today's society in Ituri and connect with the wider world. In that sense, many of them expressed regret at having lost time as a result of their enlistment in the UPC/FPLC. The vast majority of them mentioned the opportunity to learn and continue their education as a priority concern of great importance. Many compare their situations now with that of people they know who were fortunate enough not to have been enlisted, and who have been able to move ahead satisfactorily and are now working in "honourable" occupations that generate a steady income which can meet their own and their families' needs.

36. The Legal Representative concludes this section by drawing attention to the fact that all the potentially eligible victims interviewed stressed the importance of being able to offer an education to their own children and/or to their younger siblings for whom they are responsible. That wish stems directly from the regret they express about the gaps in their own education and represents a way for them now to repair their own and their family's history, by striving to build firmer foundations for the future.

D. Inappropriateness of the programmes discussed for the indirect victims

37. The Legal Representative finds that the three types of programmes currently envisaged – namely psychological assistance, medical assistance and educational/employment assistance – are completely appropriate for the potentially eligible direct victims. It seems that they should benefit from the three above-mentioned components or from at least two of the three.

38. Conversely, through the interviews, the Legal Representative's team became aware that these types of measures are inappropriate for the potentially eligible indirect victims in the light of their situation and current needs. Most of them are now older. What they seem to lack most acutely is the financial capital and/or stability that would enable them to provide for their families, given the absence or disability of the direct victim.¹⁹

39. In that regard, the Legal Representative notes that the needs expressed by the potentially eligible indirect victims stem directly from the absence of the child or children that they "lost" as a result of the latter's enlistment/conscription in the UPC/FPLC (either because the child died while in the militia or after returning as a result of injuries he/she sustained or diseases he/she contracted there; or because the child never returned and the family has no information about his/her fate; or because the child returned psychologically unstable or mad and has since been living as an outsider in his/her family). Whichever the scenario, the family now finds itself struggling to cope alone with suffering that remains unaddressed. In some cases, that suffering has divided families and parental couples (sometimes because one parent blames the other for the child's recruitment) and

¹⁹ "Judgment on the appeals of the Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008" (Appeals Chamber), ICC-01/04-01/06-1432, 11 July 2008, para. 32. See "Redacted version of 'Decision on "indirect victims"'" (Trial Chamber I), ICC-01/04-01/06-1813, 8 April 2009, para. 50.

invariably leaves them in a precarious financial situation. Indeed, the financial burden that the absent child leaves on the survivors is all the heavier as they can no longer rely on his/her support and sometimes also have to take on his/her financial responsibilities (grandchildren left behind; the child's siblings if he was the eldest son; a former child soldier who has gone mad and is often dependent). Access to education for former child soldiers' siblings and children, if any, therefore emerged as a priority from the interviews with the Legal Representative's team.

40. The Legal Representative has found that many potentially eligible indirect victims have had no news of the child soldiers since their enlistment by the UPC/FPLC. Indeed, while some indirect victims have been informed of the death of the child soldier during his/her time in the militia, other child soldiers remain unaccounted for and their relatives are unable to begin the grieving process. In that respect, the Legal Representative wonders whether it might be feasible for the Trust Fund to enter into partnerships with organizations like the International Organization for Migration (IOM) and the International Committee of the Red Cross (ICRC) or organizations specialized in tracing missing persons in order to try and give those parents at least a modicum of information about the status of their children and to provide support for the families concerned.

41. There also seems to be a fundamental need for adapted psychological support for relatives who continue to suffer from the effects of the direct victim's enlistment and/or either death or uncertainty about his/her fate.

42. Lastly, as discussed above, medical care also appears essential for some of the indirect-victim relatives.

E. Implementation of the reparations programmes: the need for monitoring by the Chamber

43. The Legal Representative notes the concerns raised by some intermediaries and by many potentially eligible victims about the implementation of the reparations programmes, stressing the critical need for the programmes to reach the victims in the instant case. Some concerns relate more specifically to the frequent misuse of projects implemented in Ituri, and the mismatch between the claims made by some implementing organizations and the projects on the ground (there are cases where organizations claim to have implemented a project in several villages when in fact it did so in only one village, leaving out a large number of beneficiaries).

44. Moreover, many potentially eligible victims are worried they will not have access to the reparations programmes if the latter are implemented only in large towns, like Bunia. The vast majority of the potentially eligible victims live in villages and *localités* far from Bunia and the main urban centres in Ituri and do not have their own transport. Moreover, most of them are currently engaged in an income-generating activity, which does not enable them to travel regularly. The effort, cost and time that would entail would be prejudicial to their well-being and, moreover, contrary to the spirit and the very objectives of the reparations programmes put in place for the victims.

45. Consequently, the Legal Representative concludes that – as highlighted in the hearings on the collective reparations programmes, and as emphasized by the Legal Representative and the Trust Fund in particular²⁰ – given the situation of the potentially eligible victims concerned, it would seem necessary for the programmes to be implemented by means of a holistic approach to the direct and indirect victims, so that they are afforded effective assistance.

²⁰ See transcripts of the hearings of 11 and 13 October 2016, see footnote, above, pp. 68 and 73, and p. 8, respectively.

[signed]

Paolina Massidda

Principal Counsel

Dated this 25 April 2017

At The Hague, Netherlands